

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

TAGGART BOYD,

Respondent.

8:21CV120

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 36) filed by Petitioner on December 27, 2021, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal (filing 37). Petitioner seeks to appeal the court's Memorandum and Order (filing 28) entered on October 28, 2021, denying Petitioner leave to appeal in forma pauperis in his prior appeal in this case; the Judgment (filing 33) and Mandate (filing 34) issued by the Eighth Circuit Court of Appeals on December 1, 2021, denying Petitioner's motion for authorization to file a successive habeas application; and the Eighth Circuit Court of Appeals' Judgment (filing 35) entered on December 9, 2021, dismissing Petitioner's previous appeal for lack of jurisdiction.

This is the third appeal Petitioner has filed in this case. The court dismissed Petitioner's habeas petition with prejudice on June 28, 2021 (filings 7 & 8), and Petitioner prosecuted an unsuccessful appeal of that judgment in which the Eighth Circuit Court of Appeals denied a certificate of appealability and dismissed the appeal on August 6, 2021 (filing 17; *see also* filing 19). Petitioner then filed a second frivolous appeal in which he purported to challenge the denial and dismissal of his initial appeal. (Filing 21.) That appeal was likewise unsuccessful. (*See* Filing 35.) Now, Petitioner is back and purportedly trying to challenge his failed second appeal.

Petitioner's appeal is clearly frivolous and not taken in good faith as he has already prosecuted an appeal of this court's judgment dismissing his habeas petition and he is improperly attempting to have the Eighth Circuit reconsider orders and judgments that essentially have already been reviewed on appeal. Thus, Petitioner may not proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals.

Dated this 6th day of January, 2022.

BY THE COURT:


Richard G. Kopf
Senior United States District Judge